

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

CATHERINE BOSTON,

Plaintiff,

- against -

J.C. PENNEY CORPORATION, INC.,

Defendant.

Case No.

Filed: 12/19/2018

Received: 1/21/2019

Removed: 1/31/2019

NOTICE OF REMOVAL TO FEDERAL COURT UNDER 28 U.S.C §§ 1332, 1441 & 1446
BY DEFENDANT J.C. PENNEY CORPORATION, INC.

PLEASE TAKE NOTICE THAT Defendant J.C. Penney Corporation, Inc., by and through its undersigned counsel, hereby removes this action to the United States District Court for the Southern District of New York, pursuant to 28 U.S.C. §§ 1332, 1441 and 1446, and the Court's Local Rule 81.1, and respectfully avers as follows:

1. On December 19, 2018, Plaintiff Catherine Boston commenced this civil action by filing a Complaint in the Supreme Court of the State of New York, County of Bronx, captioned *Catherine Boston v. J.C. Penney Corporation, Inc.*, Index No. 34338/2018. Pursuant to 28 U.S.C. § 1446(a), Defendant annexes hereto a true and correct copy of the Summons and Verified Complaint, attached as **Exhibit A**.

2. Plaintiff effectuated service on Defendant through the Secretary of State on December 28, 2018. Pursuant to 28 U.S.C. § 1446(a), Defendant annexes hereto a true and correct copy of the Proof of Service, attached as **Exhibit B**.

3. Defendant first received the initial pleading on January 21, 2019, when its registered agent, CT Corporation, received a copy of Plaintiff's Summons and Complaint via certified mail from the New York Department of State, Division of Corporations. Defendant

annexes hereto a true and correct copy of the Service of Process Transmittal from CT Corporation, including the mailing from the New York Department of State, Division of Corporations and tracking information from the United States Postal Service, attached as **Exhibit C**.

**REMOVAL ON THE BASIS OF DIVERSITY OF CITIZENSHIP AND AMOUNT IN
CONTROVERSY IS PROPER PURSUANT TO 28 U.S.C. § 1332**

1. 28 U.S.C. § 1332(a)(1) provides that “The district courts shall have original jurisdiction of all civil actions where the matter in controversy exceeds the sum or value of \$75,000, exclusive of interest and costs, and is between citizens of different States.”

2. Plaintiff Catherine Boston at all times relevant was domiciled in the County of New York, State of New York. (See **Exhibit A ¶ 1**).

3. At all material times relevant hereto, Defendant was at the times complained of and is now a Delaware Corporation, with an office and its principal place of business located at 6501 Legacy Drive, Plano, Texas.

4. The parties therefore have complete diversity of citizenship insofar as Plaintiff is a citizen of New York and Defendant is a citizen of Delaware and Texas.

5. At this time, there are no other parties to this action other than those mentioned herein which have otherwise moved, answered or appeared in the state court action.

6. 28 U.S.C. § 1446(c)(2)(A)(ii) provides that “the notice of removal may assert the amount in controversy if the initial pleading seeks a money judgment.” In support of this assertion, Defendant annexes hereto Affidavit of Nicole Zolla, Esq., attached as **Exhibit D**.

REMOVAL IS TIMELY AND PROPER PURSUANT TO 28 U.S.C. §§ 1441 and 1446

7. Venue is proper in this Court pursuant to 28 U.S.C. § 1441(a) because the State Court action is pending in the Supreme Court of the State of New York, County of Bronx, which court is in the territory of the United States District Court for the Southern District of New York.

8. 28 U.S.C. § 1446(b)(1) provides that “The notice of removal of a civil action or proceeding shall be filed within 30 days after the receipt by the defendant, through service or otherwise, of a copy of the initial pleading setting forth the claim for relief upon which such action or proceeding is based.”

9. Defendant first received a copy of the initial pleading on or about January 21, 2019. Prior to this date, Defendant had no notice of the lawsuit that was filed with the State of New York, County of Bronx. Thus, removal is timely under 28 U.S.C. § 1446(b)(1) because it is filed within 30 days of Defendant’s receipt of a copy of the initial pleading.

10. Pursuant to 28 U.S.C. § 1446(d), a copy of this Notice of Removal is being served on Plaintiff, through her counsel, and a Notice of Removal will be filed with the Clerk of the Court for the Supreme Court of the State of New York, County of Bronx to effect removal.

11. Defendant reserves the right to amend or supplement this Notice of Removal and/or to urge additional arguments in support of its entitlement to remove.

WHEREFORE, Defendant J.C. Penney Corporation, Inc. prays that the action now pending against it in Supreme Court of the State of New York, County of Bronx, described above, be removed to this Honorable Court and proceed herein; that the State Court proceed no further in this litigation; and that Defendant have such other, further and different relief as this Court may deem just and proper in the premises.

Dated: New York, New York
January 31, 2019

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Katherine Otto", positioned above a horizontal line.

Katherine Otto
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CERTIFICATE OF SERVICE

I hereby certify that on January 31, 2019, I caused a true and correct copy of the foregoing document to be filed with the Court, via the Court's ECF system, and a copy to be sent, via certified first class mail, to all counsel of record including:

Glen Devora
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